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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation
and Petition to Revoke Probation Against:

Case No. R-2111

OAH No. 2008010530

DEIDRA DIANE VINSON-UPSHUR

**FIRST AMENDED ACCUSATION
AND PETITION TO REVOKE
PROBATION**

815 N. La Brea Avenue #137
Inglewood, California 90302

Respiratory Care Practitioner License No. 4143

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this First Amended Accusation and
Petition to Revoke Probation solely in her official capacity as the Executive Officer of the
Respiratory Care Board of California (Board), Department of Consumer Affairs.

2. On or about June 14, 1985, the Board issued Respiratory Care Practitioner
License No. 4143 to Deidra Diane Vinson-Upshur (Respondent). This license was in effect at all
times relevant to the charges brought herein and will expire on October 31, 2009, unless
renewed.

3. In a disciplinary action entitled *In the Matter of the Accusation Against Deidra Diane Vinson-Upshur*, Case No. R-2003, the Board issued a decision effective April 20, 2006, in which Respondent's license was revoked. However, the revocation was stayed and Respondent's license was placed on probation for three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit 1 and incorporated herein by reference.

JURISDICTION

4. This First Amended Accusation and Petition to Revoke Probation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

7. Section 3754 of the Code states: “The board may deny an application for, or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license in any decision made after a hearing, as provided in Section 3753.”

8. Section 3750.5 of the Code states:

"In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or license holder who has done any of the following:

..

"(b) Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code. . . ."

COST RECOVERY

9. Section 3753.5, subdivision (a) of the Code states:

“In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have

1 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
2 investigation and prosecution of the case.”

3 10. Section 3753.7 of the Code states:

4 “For purposes of the Respiratory Care Practice Act, costs of prosecution shall
5 include attorney general or other prosecuting attorney fees, expert witness fees, and other
6 administrative, filing, and service fees.”

7 11. Section 3753.1, subdivision (a) of the Code states:

8 “An administrative disciplinary decision imposing terms of probation may
9 include, among other things, a requirement that the licensee-probationer pay the monetary costs
10 associated with monitoring the probation.”

11 **FIRST CAUSE TO REVOKE PROBATION**

12 **(Biological Fluid Testing)**

13 12. At all times after the effective date of Respondent’s probation, Condition 2
14 stated:

15 Respondent, at her expense, shall participate in random testing, including, but not
16 limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle
17 testing, or a drug screening program approved by the Board. Test costs range from
18 \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The
19 frequency and location of testing will be determined by the Board.

20 At all times, Respondent shall fully cooperate with the Board or any of its
21 representatives, and shall, when directed, appear for testing as requested, and submit to
22 such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs
23 or other controlled substances.

24 If Respondent is unable to provide a specimen in a reasonable amount of time
25 from the request, while at the work site, Respondent understands that any Board
26 representative may request from the supervisor, manager or director on duty to observe
27 Respondent in a manner that does not interrupt or jeopardize patient care in any manner
28 until such time Respondent provides a specimen acceptable to the Board.

1 Failure to submit to testing or appear as requested by any Board representative for
2 testing, as directed, shall constitute a violation of probation, and shall result in the filing
3 of an accusation and/or a petition to revoke probation against Respondent's respiratory
4 care practitioner's license.

5 13. Respondent's probation is subject to revocation because she failed to
6 comply with Probation Condition 2, referenced above. The facts and circumstances regarding
7 this violation are as follows:

8 A. As part of Respondent's random drug testing program, she was required to
9 telephone Compass Vision, Inc. (CVI) on a daily basis to determine if she needed to
10 provide a specimen for testing and analysis. Respondent failed to telephone CVI on the
11 following dates: August 20, 2006, October 1 and 3 through 7, 2006, May 26 and 30,
12 2007, and July 20, 2007.

13 B. Respondent was scheduled to provide a specimen for testing and analysis
14 on October 10, 2006. She failed to provide a specimen as directed.

15 **SECOND CAUSE TO REVOKE PROBATION**

16 **(Abstain from Use of Drugs and Alcohol)**

17 14. At all times after the effective date of Respondent's probation, Condition 3
18 stated:

19 Respondent shall completely abstain from the possession or use of alcohol,
20 controlled substances, dangerous drugs, and any and all other mood altering drugs,
21 substances and their associated paraphernalia, except when the drugs are lawfully
22 prescribed by a licensed practitioner as part of a documented medical treatment.

23 Respondent shall execute a release authorizing the release of pharmacy and
24 prescribing records as well as physical and mental health records. Respondent shall also
25 provide information of treating physicians, counselors or any other treating professionals
26 as requested by the Board.

27 Respondent shall ensure that she is not in the presence of or in the same physical
28 location as individuals who are using illegal substances, even if Respondent is not

1 personally ingesting the drug(s).

2 Any positive result that registers over the established laboratory cutoff level shall
3 constitute a violation of probation and shall result in the filing of an accusation and/or a
4 petition to revoke probation against Respondent's respiratory care practitioner license.

5 Respondent also understands and agrees that any positive result that registers over
6 the established laboratory cutoff level shall be reported to each of Respondent's
7 employers.

8 15. Respondent's probation is subject to revocation because she failed to
9 comply with Probation Condition 3, referenced above. The facts and circumstances regarding
10 this violation are as follows:

11 A. On June 15, 2006, Respondent appeared at a collection site to provide a
12 urine specimen for testing and analysis in accordance with her probation monitoring program.
13 The laboratory report from CVI indicated she tested positive for benzodiazepines. Respondent
14 did not provide documentation that benzodiazepines were lawfully prescribed by a licensed
15 practitioner as part of a documented medical treatment.

16 B. On September 12, 2006, Respondent provided a urine specimen for testing
17 and analysis. The laboratory report indicated she tested positive for Ethyl Glucuronide at 27000
18 ng/mL, indicating consumption of alcohol.

19 C. On October 16, 2006, Respondent provided a urine specimen for testing
20 and analysis. The laboratory report indicated she tested positive for Ethyl Glucuronide at 740
21 ng/mL.

22 D. On February 2, 2007, Respondent provided a urine specimen for testing
23 and analysis. The laboratory report indicated she tested positive for Ethyl Glucuronide at 1400
24 ng/mL.

25 E. On May 29, 2007, Respondent provided a urine specimen for testing and
26 analysis. The laboratory report indicated she tested positive for Ethyl Glucuronide at 37000
27 ng/mL.

28 F. On October 24, 2007, Respondent provided a urine specimen for testing

1 and analysis. The laboratory report indicated she tested positive for Ethyl Glucuronide at 10000
2 ng/mL.

3 G. On November 30, 2007, Respondent provided a urine specimen for testing
4 and analysis. The laboratory report indicated she tested positive for Ethyl Glucuronide at 390
5 ng/mL.

6 H. On January 2, 2008, Respondent provided a urine specimen for testing and
7 analysis. The laboratory report indicated she tested positive for Ethyl Glucuronide at 2100
8 ng/mL.

9 I. On February 26, 2008, Respondent provided a urine specimen for testing
10 and analysis. The laboratory report indicated she tested positive for Ethyl Glucuronide at 650
11 ng/mL.

12 J. On April 11, 2008, Respondent provided a urine specimen for testing and
13 analysis. The laboratory report indicated she tested positive for Ethyl Glucuronide at 680 ng/mL.

14 **THIRD CAUSE TO REVOKE PROBATION**

15 **(Obey All Laws)**

16 16. At all times after the effective date of Respondent's probation, Condition 6
17 stated:

18 Respondent shall obey all laws, whether federal, state, or local. Respondent shall
19 also obey all regulations governing the practice of respiratory care in California.

20 Respondent shall notify the Board in writing within 14 days of any incident
21 resulting in his arrest, or charges filed against, or a citation issued against Respondent.

22 17. Respondent's probation is subject to revocation because she failed to
23 comply with Probation Condition 6, referenced above. The facts and circumstances regarding
24 this violation are as follows:

25 Respondent violated section 3750.5, subdivision (b) of the Code in that she used
26 the controlled substance benzodiazepines. The facts and circumstances, set forth in Paragraph
27 15, subparagraph A of this First Amended Accusation and Petition to Revoke Probation, are
28 incorporated herein by reference.

1 **FOURTH CAUSE TO REVOKE PROBATION**

2 **(Probation Monitoring Costs)**

3 18. At all times after the effective date of Respondent's probation, Condition 9
4 stated:

5 All costs incurred for probation monitoring during the entire probation shall be
6 paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or
7 increased. Respondent's failure to comply with all terms and conditions may also cause
8 this amount to be increased.

9 All payments for costs are to be sent directly to the Respiratory Care Board and
10 must be received by the date(s) specified. (Periods of tolling will not toll the probation
11 monitoring costs incurred.)

12 If Respondent is unable to submit costs for any month, she shall be required
13 instead to submit an explanation of why she is unable to submit the costs, and the date(s)
14 she will be able to submit the costs including payment amount(s). Supporting
15 documentation and evidence of why the Respondent is unable to make such payment(s)
16 must accompany this submission.

17 Respondent understands that failure to submit costs timely is a violation of
18 probation and submission of evidence demonstrating financial hardship does not preclude
19 the Board from pursuing further disciplinary action. However, Respondent understands
20 providing evidence and supporting documentation of financial hardship may delay further
21 disciplinary action.

22 In addition to any other disciplinary action taken by the Board, an unrestricted
23 license will not be issued at the end of the probationary period and the respiratory care
24 practitioner license will not be renewed, until such time all probation monitoring costs
25 have been paid.

26 The filing of bankruptcy by Respondent shall not relieve the Respondent of his
27 responsibility to reimburse the Board for costs incurred.

28 19. Respondent's probation is subject to revocation because she failed to

comply with Probation Condition 9, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent is delinquent in her probation monitoring costs in the amount of \$2,950.00.

FIFTH CAUSE TO REVOKE PROBATION

(Cost Recovery)

20. At all times after the effective date of Respondent's probation, Condition 13 stated:

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$1,324.50 and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, she shall be required instead to submit an explanation of why she is unable to submit these costs in part or in entirety, and the date(s) she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation, and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

The filing of bankruptcy by the Respondent shall not relieve the Respondent of her responsibility to reimburse the Board for these costs.

21. Respondent's probation is subject to revocation because she failed to

1 comply with Probation Condition 13, referenced above. The facts and circumstances regarding
2 this violation are as follows:

3 A. Respondent is delinquent in her cost recovery in the amount of \$1,039.50.

4 **SIXTH CAUSE TO REVOKE PROBATION**

5 **(Supervisor Quarterly Reports)**

6 22. At all times after the effective date of Respondent's probation, Condition 5
7 stated:

8 _____ Supervisor Quarterly Reports of Performance are due for each year of probation
9 and the entire length of probation from each employer, as follows:

10 For the period covering January 1st through March 31st, reports are to be
11 completed and submitted between April 1st and April 7th. For the period covering April
12 1st through June 30th, reports are to be completed and submitted between July 1st and July
13 7th. For the period covering July 1st through September 30th, reports are to be completed
14 and submitted between October 1st and October 7th. For the period covering October 1st
15 through December 31st, reports are to be completed and submitted between January 1st
16 and January 7th. Respondent is ultimately responsible for ensuring his employer(s)
17 submits complete and timely reports. Failure to ensure each employer submits complete
18 and timely reports shall constitute a violation of probation.

19 23. Respondent's probation is subject to revocation because she failed to
20 comply with Probation Condition 5, referenced above. The facts and circumstances regarding
21 this violation are as follows:

22 A. Respondent failed to submit Supervisor Quarterly Reports for the period
23 covering October 1st through December 31st, 2007.

24 B. Respondent failed to submit Supervisor Quarterly Reports for the period
25 covering January 1st through March 31st, 2008.

26 **SEVENTH CAUSE TO REVOKE PROBATION**

27 **(Quarterly Reports)**

28 24. At all times after the effective date of Respondent's probation, Condition 7

1 stated:

2 Respondent shall file quarterly reports of compliance under penalty of perjury, on
3 forms to be provided to the probation monitor assigned by the Board. Omission or
4 falsification in any manner of any information on these reports shall constitute a violation
5 of probation, and shall result in the filing of an accusation and/or a petition to revoke
6 probation against Respondent's respiratory case practitioner license.

7 Quarterly report forms will be provided by the Board. Respondent is responsible
8 for contacting the Board to obtain additional forms if needed. Quarterly reports are due
9 for each year of probation and the entire length of probation as follows:

10 For the period covering January 1st through March 31st, reports are to be
11 completed and submitted between April 1st and April 7th. For the period covering April
12 1st through June 30th, reports are to be completed and submitted between July 1st and July
13 7th. For the period covering July 1st through September 30th, reports are to be completed
14 and submitted between October 1st and October 7th. For the period covering October 1st
15 through December 31st, reports are to be completed and submitted between January 1st
16 and January 7th.

17 Failure to submit complete and timely reports shall constitute a violation of
18 probation.

19 25. Respondent's probation is subject to revocation because she failed to
20 comply with Probation Condition 7, referenced above. The facts and circumstances regarding
21 this violation are as follows:

22 A. Respondent failed to submit Quarterly Reports for the period covering
23 October 1st through December 31st, 2007.

24 B. Respondent failed to submit Quarterly Reports for the period covering
25 January 1st through March 31st, 2008.

26 **CONTROLLED SUBSTANCE**

27 26. Benzodiazepines, including Nordiazepam, Oxazepam and Temazepam,
28 are Schedule IV controlled substances pursuant to Health and Safety Code Section 11057.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Use of a Controlled Substance)**

3 27. Respondent is subject to disciplinary action under section 3750.5,
4 subdivision (b) of the Code, in that she used the controlled substance benzodiazepines. The facts
5 and circumstances, set forth in Paragraph 15, Subparagraph A of this First Amended Accusation
6 and Petition to Revoke Probation, are substantially related to the qualifications, functions or
7 duties of a respiratory care practitioner, and are incorporated herein by reference.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

11 1. Revoking the probation that was granted by the Respiratory Care Board of
12 California in Case No. R-2003;

13 2. Revoking or suspending Respiratory Care Practitioner License No. 4143
14 issued to Deidra Diane Vinson-Upshur;

15 3. Ordering Deidra Diane Vinson-Upshur to pay the Respiratory Care Board
16 the costs of the investigation and enforcement of this case, and if probation is continued
17 or extended, the costs of probation monitoring; and

18 4. Taking such other and further action as deemed necessary and proper.

19 DATED: May 21, 2008

20
21 Original signed by Liane Zimmerman for: _____
22 STEPHANIE NUNEZ
23 Executive Officer
24 Respiratory Care Board of California
25 Department of Consumer Affairs
26 State of California
27 Complainant
28